Warsaw and Borokovsky was actually never Jewish. However, even assuming there was a conversion, R' Goren suggests it can be revoked because Borokovsky immediately returned to Christian worship. This is not revoking a conversion of someone who identifies as a Jew but is lax in certain areas of Jewish law. This is someone who, before and after conversion, was an idol-worshipper (see *Noda b'Yehuda, Yoreh Deah* 1:69)!

In fact, R' Goren may not generally believe that this statement of the Rambam is halakhically acceptable. It is enough to cast doubt and add another *snif* to the permissibility of *mamzerim*.

But most importantly, unlike other halakhic questions, R' Goren has no need to prove anything. He need not prove that there was no conversion or that there was no marriage or that the marriage was annulled. Based on the gamara in *Kiddushin* (73a): " 'A mamzer shall not enter the congregation of God,' a definite mamzer may not enter but a questionable mamzer may enter," R' Goren merely has to foment doubt.

R' Goren's goal was to follow the ways of HaShem and defend the innocent souls who are branded with the stigma of *mamzerut* (*Vayikra Rabbah* 32) so as not to take away the Jewishness of those attempting to come under His wings.

Yaakov S. Weinstein
East Brunswick, NJ

במאמרי בגליון 15 של חקירה (קיץ תשע"ג) סיפרתי על יחסו של הרב יחזקאל סרנה לרב שלמה גורן בהקשר של פרשיית "האח והאחות" בראשית שנות השבעים למאה העשרים תוך הסתמכות על עדותו של הרב יוסי הראל המופיעה בטיוטת ספר שעל הכנתו שוקד יאיר שלג. יאיר הלוי, דוקטורנט באוניברסיטת בר אילן, הפנה את תשומת לבי לכך שהרב סרנה נפטר בשנת תשכ"ט והרי שהסיפור הוא מן הנמנעות.

פניתי ליאיר שלג, ולאחר בירור ראשוני הועלתה האפשרות שהארוע התרחש סביב פרשיית בנימין שליט, קצין בחיל הים שנישא לגויה ודרש לרשום את ילדיו כחסרי דת וכבני הלאום היהודי. דרישתו זו עוררה פולמוס, והיא מהווה את אחד מהשיאים של פרשיות "מיהו יהודי" בישראל. על כל פנים, פרשיה זו התרחשה קודם לפטירת הרב סרנה, ועם זאת יש להסתייג ולהדגיש שבדיקת העניין טרם העלתה מסקנות סופיות והחלטיות.

בהזדמנות זו ברצוני להודות לשלג והלוי על נדיבותם כלפי, ולמערכת כתב העת על שבזכות פרסום המאמר התבררה נקודה זו.

אביעד יחיאל הולנדר
פתח תקווה

Propriety of a Civil Will

RABBI A. YEHUDA WARBURG is to be commended for his valuable, comprehensive review of the different halakhic approaches regarding "The Propriety of a Civil Will" (*Hakirah* vol. 15 at 163) (hereafter "Propriety"). Yet, after all is said and done, as Rabbi Warburg himself points out, "there is no halakhic consensus to affirm a civil will [and] the chance of the overwhelming

majority of the assets to be distributed and awarded to a Torah heir(s) by a beit din is a distinct possibility." Id. at 205. What then is a testator—or his *posek*—who believes in the validity of a civil will to do in order to avoid potentially divisive family disputes and ensure that the desires expressed in the civil will are fulfilled?

Here is my humble, respectful suggestion:

1. A formal "Beit Din for Civil Wills" should be established comprised of Rabbonim who agree with Rav Moshe Feinstein and other *poskim* (as Rabbi Warburg sets out in his article) that a civil will is halakhically acceptable. See id. at 169–73. Indeed, the Beth Din of America or any other established beit din can institute such a special court under its auspices.

2. During his lifetime, the testator himself, or through his attorney, can submit the civil will to the special beit din for a ruling on its validity. The beit din then renders its *p'sak* upholding the halakhic legitimacy of the will. As part of the *p'sak*, the beit din may also assert continuing halakhic jurisdiction over all matters concerning the will. Alternatively, the testator can sign a separate *shtar* directing all the heirs to adjudicate any claims relating to the will in that beit din—and in that beit din alone.

While there are no guarantees in life, the above approach should go a long way in mitigating, if not entirely foreclosing, successful attacks by disgruntled heirs on a civil will for the following reasons:

First, under normal circumstances a second beit din cannot overrule a holding of the first, especially where the first beit din concedes no error. See generally "The Appeal Process in the Jewish Legal System" by Rabbi J. David Bleich in *Contemporary Halakhic Problems* (vol. 4) (Ktav 1995) at 44-45. Thus, even if a dissatisfied heir were to bring his claims to another beit din, ostensibly that beit din would be compelled to uphold the ruling of the "Beit Din for Civil Wills."

Second, even if the second beit din were to demur as to the acceptability of Rav Moshe's holding and that of the special "Beit Din for Civil Wills," the other heirs would have a strong basis upon which to disregard any ruling by the second beit din, since the first one has already ruled.

Third, even if those heirs who were dragged into the second beit din were to accept its jurisdiction, given the lengths to which the testator went to ensure that his wishes were followed by submitting the will to the special beit din, they would have, at the very least, a very compelling argument that the second beit din should rule in their favor on the *kibud av* principle that Rabbi Warburg appears to find relatively persuasive. See Propriety at 198–203.

One could argue that it would be disrespectful of halakhah to establish a specific beit din designed to uphold Rav Moshe's apparently minority view that Rabbi Warburg

terms "problematic." Id. at 173. But Rabbi Warburg's advice at the end of his article (at 205) that we educate our community to "seek halakhic and legal counsel regarding halakhic estate-planning techniques that will avoid the potential challenges to the halakhic efficacy of a civil will" appears to be no pragmatic solution, as he himself has written about the travails of "Drafting a Halakhic Will" (*Hakirah* vol. 10) that his mythical Rabbi Simeon Levy and his family underwent notwithstanding Rabbi Levy's attempts, in his own Rabbinic capacity and then also after involving his local Rabbi, to write and effectuate a "proper" halakhic will.

For batei din to uphold (even) a minority opinion as a *l'chatchilah*, is a better option than allowing familial feuds to disrupt the wishes of a testator who sought to promote familial peace and harmony.

Yitzchak Kasdan
Silver Spring, Maryland

Rabbi A. Yehuda Warburg responds:

Thank you Mr. Kasdan, Esq. for your thoughtful review and kind comments regarding my essay dealing with the halakhic propriety of a civil will.

In reply to your proposal of setting up a "beit din for civil wills," please be aware of the following: A decision rendered by a beit din is predicated upon the fact that there is a dispute between two individuals regarding a particular matter. Parties are requested to appear at a beit din, argue their case (or have it argued on their behalf by rabbinical advocates and/or attorneys) and after a deliberation amongst the arbiters a decision is handed down. In fact, optimally the panel will be comprised of three dayanim to assure that there is an actual deliberation regarding the claims and counterclaims of the parties. If deliberations occurred and a party failed to be accorded the opportunity to be heard prior to the deliberation, the decision is null and void. See *Teshuvot Lehem Rav* 87; *Teshuvot Ba'ei Hayei HM* 1:18; *Teshuvot ve-Hanhagot* 5:357. If a panel fails to deliberate whether it should validate a civil will as a halakhic form of estate planning, any ensuing judgment is null and void. See *Teshuvot ha-Rashba* 2:104; *Teshuvot Maharlbach* 147; *Teshuvot Maharit* 2, *HM* 79. As R. Feinstein rules, "the arbiter must comprehend, resolve the matter in his mind prior to ruling." See *Iggerot Moshe, YD* 1:101. In other words, a dayan must inquire, assess the issue and then rule. A "beit din for civil wills" as described by Mr. Kasdan communicates to the reader a quite different type of proceeding.

Procedurally, Mr. Kasdan's proposal in effect entails a convening of a panel of rabbis who would be rendering a *p'sak* concerning a civil will submitted to them for halakhic review, and any subsequent ruling would be no different than an individual who submits his question(s) to a rabbi for the purpose of rendering a decision. Any decision emerging from such deliberations would have the status of a *p'sak* authored

by three rabbis which may be subject to future review and potential rejection by a beit din rather than being considered a bonafide *p'sak din* emerging from a beit din proceeding convened due to a petitioner's request (in our case, a Torah heir) to challenge the validity of the civil will. And given the absence of a petition, subsequent hearing of the arguments from both parties or absence of deliberation relating to the merits of a civil will should this panel of "a beit din for civil wills" purport to operate as a beit din, any decision handed down by this forum would be null and void.

Even if the parties sign off that they will appear at "the beit din for civil wills" in order to afford the possibility to contest the testamentary disposition, the earlier p'sak which validated the civil will neither binds the original panel who may change their minds after hearing the facts and claims of the case nor binds the Torah heir who is challenging the will to accept the original *p'sak* of "the beit din for civil wills." The earlier affirmation of the *p'sak* of Rabbis Schwadron, Feinstein and Soloveitchik and others who recognize a secular will carries no more halakhic weight than a *p'sak* of Rabbis Hazan, Goldberg, Amar and others who invalidate it.

In fact, if during the testator's life, a Torah heir would challenge the validity of the will and the testator would proceed to a rabbi(s) (rather than a beit din) to affirm the will, it is incumbent upon the rabbi(s) to hear from the Torah heir and then render a decision which has the status of the *p'sak* of a rabbi rather than a beit din judgment. See *Pithei Teshuva HM* 17 in the name of Meil Tzedaka. In the absence of hearing the other side, the rabbi(s) may only render a *p'sak* with the caveat "if the facts are as you presented to me, the decision is..." In other words, both decision making processes of a rabbi as well as a beit din are predicated upon the existence and presence of two parties and a rabbinic/beit din deliberation of the facts and claims of the opposing parties. Recently, *Machon le-Horoyah*, a beit din in Monsey, NY, bemoaned the fact that rabbis respond to a question from individuals and fail to factor into consideration the opposing side's perception of the facts and their claims. See *Meishiv Behalakhah*, 38-39. As such, the proposal of a "beit din of civil wills," which is in actuality a rabbinic endorsement of a particular civil will (rather than a beit din confirmation of a testamentary disposition), does not comport with the basic procedural requirements of responding to a halakhic inquiry, namely "hearing the other side."

For all the above reasons such a proposal lacks halakhic foundation.

In reply to Mr. Kasdan's inference that given that I found Rabbi Simeon Levy's halakhic will to be flawed therefore there remain no solutions for proper halakhic estate planning is unfounded. Admittedly, as I have shown in "Drafting a Halakhic Will," a *matnas bari* (the gift of a healthy person) is an impractical technique and fails to serve as an av-

enue for distributing all of one's assets. However, there are other viable halakhic techniques to address testamentary disposition arrangements. When people approach me regarding these matters, I suggest various techniques and prepare documents that one can implement and supplement to a conventional civil will. And as I note in my recent book, "*Rabbinic Authority: The Vision and the Reality, Beit Din Decisions in English*, Urim: 2013, 305–318, I discuss the effectiveness of a revocable living trust for estate planning. Such techniques have been rabbinically accepted and should serve as an effective deterrent for a Torah heir who is contemplating challenging a secular will in a beit din. And if for some reason, the Torah heir persists and commences a proceeding in beit din, the expectation is that the civil will ought to be affirmed in light of the document(s) prepared [i.e., "beit din proof"].

But again, as I mentioned at the conclusion of my essay, it is recommended that one contact a *dayan* in order to address estate planning arrangements, various global issues related to the contentious matter as well as particular *yerushah* matters. In fact, based upon my personal experience, even a telephone conver-sation with a potential plaintiff may "calm the waters."

As Mr. Kasdan aptly notes, "there are no guarantees in life" except for death and taxes. Having served as a *dayan* for over fourteen years, I have seen firsthand the truism that had people performed their due diligence—in terms of taking some preventive medicine to avoid litigation and/or becoming educated on which halakhic / judicial forum(s) one should resolve one's issues in—prior to catapulting into any litigation, their lives, both emotionally and financially, may well have been different. With the presentation of this suggestion of convening a special beit din for civil wills, it is clear to me that Mr. Kasdan, as a Torah-observant Jew, is grappling with how to maintain familial stability while simultaneously attempting to avoid litigation and maintain the integrity of the halakhic process. In my estimation, the answer(s) lies elsewhere.

Hopefully, these matters have been clarified.

P.S. Let me mention that similar problems are encountered regarding a wife's civil will. According to halakha, a husband inherits his wife's estate. Therefore, should the wife's civil will provide that her assets are being distributed to a third party such as a child, documents have to be prepared that will protect her wishes as well as fend off the possibility of having a beit din disinherit her designated beneficiary.

Jewish GIs' Dog-Tags

I WOULD LIKE to thank you for a very interesting article on Jewish soldiers in WWII and their dog tags.

My grandfather Herbert Schwartz *a"h* fought in the US army during WWII as a combat engineer. He was captured by the Nazis three times, and escaped each time. The